Supreme Court, U.S.
FILED
APR 24 1980
MICHAEL RODAK, JR., CLERK

Nos. 79-1258 and 79-1270

In the Supreme Court of the United States

OCTOBER TERM, 1979

CONFEDERATION OF IRANIAN STUDENTS, PETITIONER

v.

BENJAMIN R. CIVILETTI, ATTORNEY GENERAL OF THE UNITED STATES

GHOLAMREZA NARENJI, ET AL., PETITIONERS

v.

BENJAMIN CIVILETTI, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

ALICE DANIEL
Assistant Attorney General

ROBERT E. KOPP
ANTHONY J. STEINMEYER
MICHAEL JAY SINGER
Attorneys
Department of Justice
Washington, D.C. 20530

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitutional, statutory and regulatory provisions involved	3
Statement	3
Argument	7
Conclusion	19
Appendix A	1a
Appendix B	12a

CITATIONS

Cases:

Brown v. *United States*, 12 U.S. (8 Cranch) 110	18
Carlson v. *Landon*, 342 U.S. 524	8-9
Fiallo v. *Bell*, 430 U.S. 787	15
Fong Haw Tan v. *Phelan*, 333 U.S. 6	12
Hampton v. *Mow Sun Wong*, 426 U.S. 88	15, 16
Harisiades v. *Shaughnessy*, 342 U.S. 580	6, 14
Jalil v. *Campbell*, 590 F.2d 1120	16
Jay v. *Boyd*, 351 U.S. 345	9
Kent v. *Dulles*, 357 U.S. 116	12, 13
Kleindienst v. *Mandel*, 408 U.S. 753	9, 14
Mathews v. *Diaz*, 426 U.S. 67	6, 14, 15, 16
Mow Sun Wong v. *Hampton*, 435 F. Supp. 37	16
Saxbe v. *Bustos*, 419 U.S. 65	11
United States v. *Curtiss-Wright Export Corp.*, 299 U.S. 304	8

Cases—Continued

	Page
United States ex rel. Knauff v. *Shaughnessy*, 338 U.S. 537	9
Vergara v. *Hampton*, 581 F.2d 1281, cert. denied, 441 U.S. 905	16
Zemel v. *Rusk*, 381 U.S. 1	8

Constitution, statutes and regulations:

United States Constitution, Fifth Amendment, Due Process Clause	2, 6, 14, 1a
Immigration and Nationality Act of 1952, 8 U.S.C. 1101 *et seq.*	8
8 U.S.C. 1103(a)	6, 8, 12, 1a
8 U.S.C. 1105a(3)	5
8 U.S.C. 1152(a)	11
8 U.S.C. 1184(a)	6, 8, 12, 13, 3a
8 U.S.C. 1201	9
8 U.S.C. 1202	9
8 U.S.C. 1251(a)	12, 3a
8 U.S.C. 1251(a)(9)	6, 8, 13, 3a
8 U.S.C. 1301	9
8 U.S.C. 1302	9
8 U.S.C. 1303(a)(5)	10, 4a
8 U.S.C. 1304	9
8 U.S.C. 1305	9
8 U.S.C. 1306(b)	10
8 U.S.C. 1306(c)	10
8 U.S.C. 1357(a)(1)	10
8 C.F.R. 3.6(a)	5
8 C.F.R. 101.1	10
8 C.F.R. 214.5	2, 3, 5, 6, 7, 11, 14, 4a, 7a
8 C.F.R. 214.5(a)	4, 6a, 10a
8 C.F.R. 214.5(b)	4, 13, 6a
8 C.F.R. Part 231	10
8 C.F.R. 252.1	10

Miscellaneous:

	Page
Exec. Order No. 11935 (1976), 5 U.S.C. 3301 note	16
44 Fed. Reg. 65727-65728 (1979)	3, 4a
44 Fed. Reg. 75165-75166 (1979)	4, 7a
1A & 2 C. Gordon & H. Rosenfield, *Immigration Law and Procedure* (rev. ed. 1979)	9
L. Henkin, *Foreign Affairs and the Constitution* (1972)	18
Restatement (Second) of Foreign Relations Law of the United States (1965)	18
15 *Weekly Comp. of Pres. Doc.* 2107 (Nov. 10, 1979)	3, 12a
16 *Weekly Comp. of Pres. Doc.* 611-612 (Apr. 7, 1980)	3

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1258

CONFEDERATION OF IRANIAN STUDENTS, PETITIONER

v.

BENJAMIN R. CIVILETTI, ATTORNEY GENERAL
OF THE UNITED STATES

No. 79-1270

GHOLAMREZA NARENJI, ET AL., PETITIONERS

v.

BENJAMIN CIVILETTI, ATTORNEY GENERAL
OF THE UNITED STATES, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-10)[1] is not yet reported. The order of the

---

[1] Unless otherwise noted, "Pet. App." refers to the petition in No. 79-1270.

court of appeals denying the suggestions for rehearing en banc and the accompanying opinion and joint statement (Pet. App. C-1 to C-13) are not yet reported. The opinion of the district court (Pet. App. D-1 to D-32) is reported at 481 F. Supp. 1132.

JURISDICTION

The judgment of the court of appeals (Pet. App. B-1 to B-2) was entered on December 27, 1979. The petition for rehearing of petitioners in No. 79-1270 and the suggestion for rehearing en banc of petitioner in No. 79-1258 were denied on January 31, 1980. The petitions for a writ of certiorari were filed on February 13, 1980 (No. 79-1258) and on February 16, 1980 (No. 79-1270). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Attorney General, acting pursuant to the direction of the President, had authority to promulgate 8 C.F.R. 214.5, a regulation requiring aliens who are citizens of Iran and visiting this country for the purpose of study to report to the Immigration and Naturalization Service to verify their residence and nonimmigrant status.

2. Whether 8 C.F.R. 214.5 violates the Due Process Clause of the Fifth Amendment.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant constitutional, statutory and regulatory provisions are set forth in Appendix A, *infra*, 1a-11a.

STATEMENT

1. On November 13, 1979, the Attorney General, acting pursuant to the direction of the President, 15 *Weekly Comp. of Pres. Doc.* 2107 (Nov. 10, 1979) (App. B, *infra*, 12a), promulgated 8 C.F.R. 214.5 as one of several deliberate and measured actions that were taken by the United States "in the course of, and in response to, the international crisis created by the unlawful detention of American citizens in the American Embassy in Tehran." 44 Fed. Reg. 65727-65728 (1979) (App. A, *infra*, 7a).[2] This regulation required all aliens who are natives or citizens of Iran and visiting this country as nonimmigrant students to report to the Immigration and Naturalization Service (INS) before December 14, 1979, and to provide information about their residence and nonimmigrant status. It further provided that failure to comply with this reporting requirement would constitute a ground for deportation. The time period

[2] Other actions taken at approximately the same time were a freeze on Iranian assets in the United States and a cessation of imports of Iranian oil (see Pet. App. A-8). More recently, as the crisis has continued, the United States has taken further actions, including the severing of diplomatic relations with Iran and the expulsion of Iranian diplomatic envoys to the United States. See 16 *Weekly Comp. of Pres. Doc.* 611-612 (Apr. 7, 1980).

for reporting was subsequently extended to December 31, 1979. 44 Fed. Reg. 75165-75166 (1979) (App. A, *infra*, 7a-11a).

Specifically, 8 C.F.R. 214.5(a) required all nonimmigrant alien post-secondary school students who are natives or citizens of Iran to report to the local INS District Office, suboffice or campus representative on or before December 31, 1979, to "provide information as to residence and maintenance of nonimmigrant status." At the time of reporting, each student was required to present (1) his or her passport and Form I-94 (arrival and departure record); (2) evidence of school enrollment and payments of fees; (3) a letter from school authorities showing the number of course hours in which the student was enrolled and attesting to the student's good standing; and (4) evidence of the student's current address in the United States and "such other information as INS may request in order to verify maintenance of status and residence." 8 C.F.R. 214.5(a). The regulation also provided that failure to comply with the foregoing reporting requirement "will be considered a violation of the conditions of the nonimmigrant's stay in the United States and will subject him or her to deportation proceedings under Section 241(a)(9) of the Act." 8 C.F.R. 214.5(b).

The deadline of December 31, 1979, has, of course, now passed, and thus the reporting requirement challenged by petitioners has expired. INS figures indicate that 56,694 Iranian nonimmigrant students did report pursuant to the regulation. As of March 31,

1980, 49,593 of these individuals had been found to be in status, 6,366 had been found to be deportable, and 735 cases were pending verification.[3] In addition, 861 individuals had been identified who had failed to report in compliance with the regulation.

2. On November 21, 1979, petitioners Narenji, *et al.*, filed a class action in the United States District Court for the District of Columbia challenging the validity of the regulation and seeking declaratory and injunctive relief. On November 27, 1979, petitioner Confederation of Iranian Students (Confederation) filed a similar suit in the same court seeking identical relief. The two actions were consolidated and expeditiously decided by the district court on cross-motions for summary judgment. On December 11, 1979, the district court entered judgment for petitioners and enjoined enforcement of the challenged regulation (Pet. App. D-1 to D-36).

The government immediately filed an appeal and obtained a stay of the district court's order from the United States Court of Appeals for the District of Columbia Circuit on December 14, 1979. On December 27, 1979, following expedited briefing and oral argument by the parties, a panel of the court of appeals reversed the judgment of the district court and upheld the validity of 8 C.F.R. 214.5 (Pet. App. A-1 to A-10, B-1 to B-2).

---

[3] Any individual found to be deportable may automatically obtain a stay of deportation pending administrative and judicial review. 8 C.F.R. 3.6(a); 8 U.S.C. 1105a(3).

In sustaining 8 C.F.R. 214.5, the court of appeals first concluded that "[t]he regulation is within the authority delegated by Congress to the Attorney General under the Immigration and Nationality Act," 8 U.S.C. 1103(a), 1184(a) and 1251(a)(9) (Pet. App. A-3). In addition, the court held that the Act supports the Attorney General's authority to draw distinctions among nonimmigrant alien students on the basis of nationality "so long as his action is reasonably related to the duties imposed upon him" (*ibid.*). In the court's view, "promulgation of regulation 214.5 is directly and reasonably related to the Attorney General's duties and authority under the Act" (*id.* at A-4).

Second, the court of appeals rejected the district court's view that the regulation violates the equal protection component of the Due Process Clause of the Fifth Amendment in drawing a distinction along the lines of nationality. The court below stated that "[d]istinctions on the basis of nationality may be drawn in the immigration field by the Congress or the Executive" and "[s]o long as such distinctions are not wholly irrational they must be sustained" (Pet. App. A-4). Under the circumstances presented by this case, the court of appeals concluded that "[t]he Attorney General's regulation 214.5 meets that test; it has a rational basis" (*id.* at A-5). Relying on *Mathews* v. *Diaz*, 426 U.S. 67, 81-82 (1976), and *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952), the court of appeals found that the district court, in evaluating the policy reasons for the regulation and concluding that it had no rational basis, had gone "beyond an acceptable judicial role" (Pet. App. A-5 to A-6). Rather, the court noted (*id.* at A-7): "This court is not in a position to say what effect the required reporting by several thousand Iranian students, who may be in this country illegally, will have on the attitude and conduct of the Iranian government. That is a judgment to be made by the President and it is not for us to overrule him, in the absence of acts that are clearly in excess of his authority."

Petitioners Narenji, *et al.*, filed a petition for rehearing and petitioner Confederation filed a suggestion for rehearing en banc, which were denied on January 31, 1980 (Pet. App. C-1 to C-13). On February 22, 1980, petitioner Confederation filed a motion in the court of appeals seeking recall of the mandate and a stay of deportations pending review by this Court. The court of appeals denied the requested relief on March 3, 1980. Petitioner Confederation then applied to this Court on March 7, 1980, for the same relief. The Chief Justice denied the application on March 12, 1980. The stay application was resubmitted to Mr. Justice Brennan and then referred to the Court. On March 31, 1980, the Court denied the stay (No. A-750).

ARGUMENT

The court of appeals correctly held that 8 C.F.R. 214.5 was promulgated as an appropriate exercise of the broad scope of authority conferred by Congress

upon the Attorney General under the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, and that the regulation does not violate the Constitution.

1. 8 U.S.C. 1103(a) provides that "[t]he Attorney General shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens" and "shall establish such regulations * * * and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter." In similarly broad terms, 8 U.S.C. 1184(a) provides, with specific reference to nonimmigrant aliens, that "[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe * * *." Finally, 8 U.S.C. 1251(a)(9) expressly empowers the Attorney General to order the deportation of any nonimmigrant alien who has "failed to maintain the nonimmigrant status in which he was admitted * * *, or to comply with the conditions of any such status." Thus, the Attorney General is given broad statutory authority to administer the Act and, specifically, to determine the conditions of an alien's stay in the United States.[4]

[4] Because of the need for flexibility, it is common for Congress to make broad grants of authority to the Executive in areas affecting foreign affairs. See *Zemel* v. *Rusk*, 381 U.S. 1, 17 (1965); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 324 (1936). Similarly, the power of Congress over matters relating to aliens may generally be delegated to and exercised entirely through executive officers. *Carlson* v. *Landon*, 342 U.S. 524, 537 (1952). See also *United States ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537, 543 (1950). And these executive officers are given broad discretion in the exercise of that power. See, *e.g.*, *Kleindienst* v. *Mandel*, 408 U.S. 753 (1972); *Jay* v. *Boyd*, 351 U.S. 345, 354 (1956); *Carlson* v. *Landon*, *supra*, 342 U.S. at 543; 1A C. Gordon & H. Rosenfield, *Immigration Law and Procedure* §§ 4.3f, 4.4 (rev. ed. 1979).

The particular regulation at issue in this case simply imposed a one-time reporting and registration program for nonimmigrant aliens who are natives or citizens of Iran and are visiting the United States on temporary student visas. Compliance with the program imposed only a minimal burden on the nonimmigrant students. The information requested, concerning their identities, status and other pertinent matters, is of the kind that aliens visiting this country for longer than 30 days are typically required to furnish at frequent intervals. See generally 1A & 2 C. Gordon & H. Rosenfield, *Immigration Law and Procedure* §§ 4.20, 6.10 (rev. ed. 1979). See also 8 U.S.C. 1201, 1202, 1301, 1302, 1304 (application requirements including supplying personal information; registration, fingerprinting and photograph requirements); 8 U.S.C. 1305 (every alien in the United States who is subject to registration requirements must notify the Attorney General in writing each year of his current address and such additional information as may be required; every temporary resident alien must notify the Attorney General of his

address every three months).[5] Thus, as the court of appeals concluded (Pet. App. A-4), the regulation "is directly and reasonably related to the Attorney General's duties and authority under the Act."

Moreover, more specific provisions of the Act authorize the type of regulation at issue. The Attorney General is expressly "authorized to prescribe special regulations and forms for the registration and fingerprinting of" certain specified groups of aliens as well as "aliens of any other class not lawfully admitted to the United States for permanent residence." 8 U.S.C. 1303(a)(5). INS officers and employees are also statutorily empowered, in accordance with applicable regulations prescribed by the Attorney General, "without warrant * * * to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." 8 U.S.C. 1357 (a)(1). In exercising his authority under the Act, the Attorney General may make classifications according to nationality where appropriate, and both INS and the Attorney General have done so in the past. See, *e.g.*, 8 C.F.R. 101.1 (presumption of lawful admission for certain national groups); 8 C.F.R. Part 231 (arrival and departure manifests for passengers from particular countries); 8 C.F.R. 252.1 (relaxa-

[5] Failure to comply with these address-notification requirements may subject the alien to deportation proceedings. See 8 U.S.C. 1306(b). Furthermore, an alien who knowingly makes fraudulent statements in an application for registration is also subject to deportation proceedings. See 8 U.S.C. 1306(c).

tion of inspection requirements for certain British and Canadian crewmen). See also *Saxbe* v. *Bustos*, 419 U.S. 65 (1974) (approving special immigrant status for Mexican and Canadian commuters although no express statutory authorization for this nationality-based distinction).[6] Accordingly, the Attorney General's promulgation of 8 C.F.R. 214.5 is another valid exercise of his congressionally delegated authority to obtain information about nonimmigrant aliens in this country, to prescribe the conditions for a nonimmigrant alien's maintenance of status, and to order the deportation of those nonimmigrants who fail to comply with such conditions.[7]

[6] 8 U.S.C. 1152(a) does prohibit preferences based upon nationality in the issuance of immigrant visas. That section codifies the 1965 amendment to the Act that abolished the historical immigration quota system. Concerned as it is with immigrant visas, that section has no application here to a regulation concerning nonimmigrant aliens visiting this country on student visas. Indeed, the specific prohibition in Section 1152(a) indicates, if anything, that Congress did not intend to prohibit nationality classifications unless it expressly said so. Petitioners' contention (79-1270 Pet. 8-9 n.4) that the court of appeals' decision authorizes the Attorney General to repeal administratively the unrelated 1965 amendment is completely without foundation.

[7] Petitioners argue (79-1270 Pet. 9-13; 79-1258 Pet. 10-11) that the court of appeals erred in finding that the Executive has "inherent power" to draw nationality distinctions in the immigration field. This contention misreads the opinion of the court of appeals. Although the foreign affairs power certainly gives the Executive some power over foreign nationals apart from that delegated by Congress, the court of appeals plainly and unequivocally held that "[t]he regulation is within the authority delegated by Congress to the Attorney General un-

Petitioner Confederation suggests that the court of appeals' construction of Sections 103(a) and 214 (a) of the Immigration and Nationality Act, 8 U.S.C. 1103(a) and 1184(a), ignores a doctrine purportedly established in *Fong Haw Tan* v. *Phelan*, 333 U.S. 6 (1948), that "deportation statutes are to be given a strict construction" (79-1258 Pet. 9). This contention is without merit. In *Fong Haw Tan*, the Court, relying partly on the legislative history of the section, held that an alien was not subject to deportation under a particular provision of the Immigration Act in force at the time. See 8 U.S.C. 1251(a). The Court also noted that a rule of narrow construction in favor of the individual was appropriate. 333 U.S. at 10. That rule applies to specific statutory language that determines the status of individual aliens, specifically in the context of a deportation proceeding. It has no relevance whatsoever to a determination of the scope of the Attorney General's broad authority under the Act to promulgate regulations that are rationally related to the statutory purposes.

Similarly, *Kent* v. *Dulles*, 357 U.S. 116 (1958), has no application here (see 79-1270 Pet. 8). In *Kent*, the Court gave a narrow construction to the power of the Executive to withhold a passport be-

---

der the Immigration and Nationality Act" and it "is directly and reasonably related to the Attorney General's duties and authority under the Act" (Pet. App. A-3 to A-4). Accordingly, the court had no occasion to examine the inherent authority of the Executive in this area of the law, and it did not purport to do so.

cause the action prevented "an exercise by an American citizen of an activity included in constitutional protection." 357 U.S. at 129. Here, by contrast, neither American citizens nor constitutionally protected activities are involved. There is no question that aliens may constitutionally be subject to reporting requirements such as those outlined in the regulation, and nothing in *Kent* suggests that the Executive power to impose such requirements must be narrowly construed.

Petitioners Narenji, *et al.*, further contend (Pet. 7-8) that the court of appeals' decision permits the Attorney General to exceed his administrative function and create new "substantive classifications" among aliens that determine their deportability. This contention is erroneous. The challenged portion of the regulation merely imposes a reporting and registration requirement and, in addition, provides that failure to comply with that requirement "will be considered a violation of the conditions of the nonimmigrant's stay in the United States and will subject him or her to deportation proceedings under Section 241(a)(9) of the Act." 8 C.F.R. 214.5(b). The Act expressly directs the Attorney General to determine the conditions of a nonimmigrant's stay. 8 U.S.C. 1184(a). And 8 U.S.C. 1251(a)(9) expressly authorizes the deportation of any nonimmigrant who has "failed to maintain the nonimmigrant status in which he was admitted * * *, or to comply with the conditions of any such status." Thus, the regulation creates no new classification of deportable

aliens. It is Congress that has decided that a failure to comply with the administrative conditions of his status may subject a nonimmigrant to deportation.

2. Petitioners also contend (79-1270 Pet. 13-15; 79-1258 Pet. 10-11) that 8 C.F.R. 214.5 violates the equal protection guarantee embodied in the Due Process Clause of the Fifth Amendment. The court of appeals held that distinctions may be drawn among aliens on the basis of nationality as long as the distinction is supported by a rational basis (Pet. App. A-4 to A-5). Petitioners mistakenly urge, however, that a stricter standard of review is applicable here and that such a standard compels invalidation of the regulation.

This Court has consistently maintained that a narrow standard of judicial review must be applied in the immigration area. See, *e.g.*, *Kleindienst* v. *Mandel*, 408 U.S. 753, 765-767 (1972); *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952). As the Court explained in *Mathews* v. *Diaz*, 426 U.S. 67, 81-82 (1976) (footnotes omitted):

> For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government. Since decisions in these matters may implicate our relations with foreign powers, and since a wide variety of classifications must be defined in the light of changing political and economic circumstances, such decisions are frequently of a character more appropriate to

> either the Legislature or the Executive than to the Judiciary. * * * Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution. The reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by Congress or the President in the area of immigration and naturalization.

See also *Fiallo* v. *Bell*, 430 U.S. 787, 794-795 (1977). In *Diaz*, the Court upheld a provision that conditioned an alien's eligibility for participation in a federal medical insurance program on continuous residence in the United States for a five-year period and admission for permanent residence, noting that neither requirement was "wholly irrational." 426 U.S. at 83. The regulation at issue here strongly implicates the concerns set out in *Diaz* that require a narrow scope of judicial review, because the government's decision was closely related to changing political circumstances and our relations with Iran (Pet. App. A-4 to A-5).

Petitioners assert (79-1270 Pet. 14-15; 79-1258 Pet. 11), however, that *Hampton* v. *Mow Sun Wong*, 426 U.S. 88 (1976), establishes a broad standard of review that requires a court to consider whether the regulation at issue legitimately promotes an overriding government interest. This contention completely misreads *Mow Sun Wong*. In that case, the Court held only that the Civil Service Commission, which "has no responsibility for foreign affairs, for

treaty negotiations, for establishing immigration quotas or conditions of entry, or for naturalization policies," could not rely on the assertion of overriding national interests in those areas to provide a rational basis for an administrative regulation that excluded aliens from civil service employment. 426 U.S. at 114. The decision rested on the fact that the Civil Service Commission had no responsibility for the interests asserted as the predicate for the rule. 426 U.S. at 103. The Court certainly did not suggest that a classification established by Congress or the President in furtherance of such interests would be subject to other than the traditional narrow standard of judicial review reaffirmed that very day in *Diaz*. On the contrary, the Court noted that it was willing to assume that if the President had imposed the same requirement, "it would be justified by the national interest in providing an incentive for aliens to become naturalized, or possibly even as providing the President with an expendable token for treaty negotiating purposes." 426 U.S. at 105. See also id. at 114, 116.[8] Indeed, the Court specifically stated in *Mow Sun Wong* that "the power over aliens is of a political character and therefore subject only to narrow judicial review." 426 U.S. at 101-102 n.21.

[8] In fact, the President subsequently issued Exec. Order No. 11935 (1976), 5 U.S.C. 3301 note, excluding aliens from federal civil service employment, and that order has been upheld by the courts. See *Jalil* v. *Campbell*, 590 F.2d 1120, 1123 n.3 (D.C. Cir. 1978); *Vergara* v. *Hampton*, 581 F.2d 1281 (7th Cir. 1978), cert. denied, 441 U.S. 905 (1979); *Mow Sun Wong* v. *Hampton*, 435 F. Supp. 37 (N.D. Calif. 1977).

Finally, there can be little doubt that, even under a broader scope of review, the reporting requirement for Iranian nonimmigrant alien students is constitutional. The Attorney General declared that the regulation constitutes "an element of the language of diplomacy by which international courtesies are granted or withdrawn in response to actions by foreign countries. The action implemented by these regulations is therefore a fundamental element of the President's efforts to resolve the Iranian crisis and to maintain the safety of the American hostages in Tehran" (Pet. App. A-4 to A-5). The regulation also was intended to secure current information regarding the identity and location of Iranian students residing in the United States in order to increase domestic security and to reduce the potential for domestic violence. Declaration of Benjamin R. Civiletti, Nov. 29, 1979, ¶ 4 (A. 105).[9] The gravity of the crisis with Iran, which has now led the United States to break diplomatic relations with and to impose economic sanctions on that nation, clearly provides a sufficient basis to impose a reporting requirement on Iranian nationals present in this country that is not imposed upon other aliens.[10] The court of appeals

[9] "A." refers to the Joint Appendix filed in the court of appeals.

[10] The regulation was promulgated, of course, at a time when the United States still formally maintained diplomatic relations with Iran, but the decision as to when our relations with a foreign nation have so deteriorated that an effort to ascertain the status of its nationals in our country is appropriate is

therefore correctly concluded that the distinction drawn between Iranian and other alien students has a rational basis (Pet. App. A-5).

3. Finally, petitioner Confederation contends that the court of appeals should have examined the applicability of international law and vaguely suggests that the regulation violates such law (79-1258 Pet. 11-12). But it is well established that international law does not prohibit disparate treatment of aliens of different nationalities if there is a reasonable basis for the disparity, including the conduct of the alien's home country. See *Restatement (Second) of Foreign Relations Law of the United States* §§ 166, 200 (1965). Moreover, "the Constitution does not forbid the President (or the Congress) to violate international law, and the courts will give effect to acts within the constitutional powers of the political branches without regard to international law." L. Henkin, *Foreign Affairs and the Constitution* 222 (1972) (footnote omitted). See *Brown* v. *United States*, 12 U.S. (8 Cranch) 110, 128 (1814) ("[U]sage [of the law of nations] is a guide which the sovereign follows or abandons at his will"); *Restatement (Second) of Foreign Relations Law of the United States* § 3, Comment j (1965).

---

one that is committed to the political branches of our government. Once it has been determined that the classification established by the political branches has a rational basis, the judicial inquiry is at an end.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

ALICE DANIEL
Assistant Attorney General

ROBERT E. KOPP
ANTHONY J. STEINMEYER
MICHAEL JAY SINGER
Attorneys

APRIL 1980

APPENDIX A

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides in pertinent part:

> No person shall be * * * deprived of life, liberty, or property, without due process of law * * *.

Section 103(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1103(a), provides:

> § 1103. Powers and duties of the Attorney General and Commissioner; appointment of Commissioner
>
> (a) The Attorney General shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular offices: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this chapter.

He is authorized, in accordance with the civil-service laws and regulations and chapter 51 and subchapter III of chapter 53 of title 5, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this chapter; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish officers of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this chapter, detail employees of the Service for duty in foreign countries.

Section 214(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1184(a), provides:

§ 1184. Admission of nonimmigrants

(a) Regulations

The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

Section 241(a)(9) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1251(a)(9), provides:

§ 1251. Deportable aliens

(a) General classes

Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

* * * * *

(9) was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 1258 of this title, or to comply with the conditions of any such status;

* * * * *

Section 263(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1303(a), provides:

> § 1303. Registration of special groups
>
> (a) Notwithstanding the provisions of sections 1301 and 1302 of this title, the Attorney General is authorized to prescribe special regulations and forms for the registration and fingerprinting of (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions within the United States, (4) aliens under order of deportation, and (5) aliens of any other class not lawfully admitted to the United States for permanent residence.

8 C.F.R. 214.5, as published in the Federal Register at 44 Fed. Reg. 65727-65728 (Nov. 14, 1979), provides:

> SUMMARY: On November 10, 1979, the President ordered the Attorney General to identify Iranian students in the United States who are not maintaining status and to take immediate steps to commence deportation proceedings against such persons. The Attorney General directed the Immigration and Naturalization Service to issue regulations requiring all nonimmigrant Iranian students to report their present location and status promptly to the nearest INS office and to take additional actions to identify and locate all Iranian students to determine their immigration status. In compliance with the President's directive, the regulations governing maintenance of status by nonimmigrant students will be amended to require Iranian students in the United States to report within 30 days to the nearest INS office or to an INS representative on campus and to present certain information verifying location and status as a student. Failure to report as required or provision of false information to the INS will subject a student to deportation proceedings for failure to comply with the conditions of nonimmigrant status. Conviction of a crime punishable by imprisonment for more than one year will constitute failure to maintain status. These regulations are issued under the authority vested in the Attorney General by Section 214 (a) of the Immigration and Nationality Act, 8 U.S.C. 1184(a).

> EFFECTIVE DATE: November 13, 1979.
>
> FOR FURTHER INFORMATION CONTACT: James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service. Telephone: (202) 633-3048.
>
> SUPPLEMENTARY INFORMATION: This regulation makes immediately effective as to Iranian students the provisions of the regulation published this date which defines as conditions of status obedience to laws of all jurisdictions of the United States and the provision of truthful information to the INS.
>
> By virtue of the authority vested in me by 8 U.S.C. 1103(a) and 1184(a) and 8 U.S.C. 301, Part 214 of Chapter I of Title 8, Code of Federal Regulations, is amended by adding a new § 214.5 to read as follows.

PART 214—NONIMMIGRANT CLASSES

§ 214.5 Requirements for maintenance of status for nonimmigrant students from Iran.

(a) An alien admitted as an F-1 or J-1 nonimmigrant student to attend a post-secondary school, including a vocational school, who is a native or citizen of Iran must report to the INS District Office or suboffice having jurisdiction over his or her school or to an INS representative on campus before December 14, 1979, and provide information as to residence and maintenance of nonimmigrant status. Each student must have in his or her possession at the time of reporting:

(1) Passport and Form I-94;

(2) Evidence from the school of enrollment and payment of fees or waiver of payment of fees for the current semester;

(3) A letter from school authorities attesting to the course hours in which presently enrolled and the fact that the student is in good standing; and

(4) Evidence of current address in the United States. Students must provide such other information as INS may request in order to verify maintenance of status and residence.

(b) Failure by a nonimmigrant student to comply with the provisions of paragraph (a) of this section or willful provision of false information to the INS will be considered a violation of the conditions of the nonimmigrant's stay in the United States and will subject him or her to deportation proceedings under Section 241(a)(9) of the Act.

(c) A condition of the admission and continued stay in the United States of a nonimmigrant covered by paragraph (a) of this section is obedience to all laws of United States jurisdictions which prohibit the commission of crimes of violence and for which a sentence of more than one year imprisonment may be imposed. A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed, (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under Section 241(a)(9) of the Act.

The foregoing actions are taken in accordance with the Presidential directive of November 10, 1979, issued in the course of, and in response to, the international crisis created by the unlawful detention of American citizens in the American Embassy in Tehran. Accordingly, the notice and comment and delayed effective date provisions of Section 553 of Title 5 of the United States Code are hereby waived as impracticable and contrary to the public interest.

Effective date. The amendments contained in this order become effective on November 13, 1979.

Dated: November 13, 1979. Benjamin R. Civiletti, *Attorney General of the United States.*

8 C.F.R. 214.5, as amended by publication in the Federal Register at 44 Fed. Reg. 75165-75166 (Dec. 19, 1979), provides:

SUMMARY: This document amends the regulations of the Immigration and Naturalization

Service to extend through December 31, 1979 the reporting requirement for Iranian nonimmigrant students promulgated by the Attorney General on November 13, 1979. Under this requirement, they must provide information as to residence and maintenance of nonimmigrant status to the Immigration and Naturalization Service on or before December 31, 1979. This amendment is necessary because the Service suspended the program on December 11, 1979 pursuant to an order of the U.S. District Court for the District of Columbia. A stay of that order was obtained from the United States Court of Appeals for the District of Columbia on December 14, 1979. Accordingly, the program will be reinstated and the reporting date extended through December 31, 1979.

EFFECTIVE DATE: December 17, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Hoofnagle, Jr. (202) 633-3048.

SUPPLEMENTARY INFORMATION: On November 14, 1979, the Attorney General issued an order amending Title 8 of the Code of Federal Regulations to add a new § 214.5 which established requirements for maintenance of status for nonimmigrant students from Iran. 44 FR 65727, Nov. 14, 1979. That regulation required a native or citizen of Iran, admitted as an F-1 or J-1 nonimmigrant student to attend a post-secondary school including a vocational school, to report to the INS District Office or suboffice having jurisdiction over his or her school or to an INS representative on campus before December 14, 1979, and to provide information as to residence and maintenance of nonimmigrant status.

On December 11, 1979, the Service was enjoined from enforcing this regulation and suspended the program pursuant to an order of the U.S. District Court for the District of Columbia. *Narenji* v. *Civiletti*, Civ. No. 79-3189 (D.D.C. December 11, 1979).

On December 14, 1979, the U.S. Court of Appeals for the District of Columbia, based on a representation of the Attorney General that he would extend the reporting period, stayed the order of the district court pending a decision on the Government's appeal. *Narenji* v. *Civiletti*, No. 79-2460 (D.C. Cir. December 14, 1979.)

Therefore, the Service will continue the program of interviewing Iranian nonimmigrant students to determine their location and current nonimmigrant status. Iranian nonimmigrant students who do not report on or before December 31, 1979 will be out of status and subject to deportation for failure to comply with the conditions of nonimmigrant status. However, as represented to the court of appeals in *Narenji* v. *Civiletti*, supra, no Iranian nonimmigrant student will be required to depart the United States on the basis of information provided under this program or for failure to report under the program pending decision of that court.

Accordingly, 8 CFR 214.5 will be amended to extend the date by which Iranian nonimmigrant students must report through December 31, 1979.

In the light of the foregoing, and by virtue of the authority vested in me by 8 U.S.C. 1103

(a) and 1184(a) and 5 U.S.C. 301, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

In Part 214, § 214.5(a) is amended by revising the first sentence to substitute for "before December 14, 1979," the following language: "on or before December 31, 1979". As amended, the first sentence reads as follows:

§ 214.5 Requirements for maintenance of status for nonimmigrant students from Iran.

(a) An alien admitted as an F-1 or J-1 nonimmigrant student to attend a post-secondary school, including a vocational school, who is a native or citizen of Iran must report to the INS District Office or suboffice having jurisdiction over his or her school or to an INS representative on campus on or before December 31, 1979, and provide information as to residence and maintenance of nonimmigrant status. * * *

* * * * *

The extension provided in this regulation is ordered pursuant to the Attorney General's representation to the U.S. Court of Appeals and in order to complete the program undertaken in accordance with the Presidential directive of November 10, 1979, issued in the course of, and in response to the international crisis created by the unlawful detention of American citizens in the American Embassy in Tehran. Accordingly, the notice and comment and delayed effective date provisions of Section 553 of Title 5 of the

United States Code are hereby waived as impracticable and contrary to the public interest.

EFFECTIVE DATE: The amendments contained in the order become effective on December 17, 1979.

Dated: December 17, 1979.

Benjamin R. Civiletti, *Attorney General of the United States.*

APPENDIX B

The President's directive of November 10, 1979, provides:

> Iranian Students in the United States
>
> Announcement on Actions To Be Taken by the Department of Justice. November 10, 1979
>
> The President has directed the Attorney General to identify any Iranian students in the United States who are not in compliance with the terms of their entry visas, and to take the necessary steps to commence deportation proceedings against those who have violated applicable immigration laws and regulations.
>
> As an initial measure, the Immigration and Naturalization Service of the Department of Justice will issue a notice requiring all Iranian students to report their present location and status immediately to the nearest INS office, and will take additional steps to locate and identify such students to determine legal status. For students found to be in illegal status, deportation proceedings will be conducted in accordance with constitutional due process requirements.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 318601 293